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MILDE & HOFFBERG, LLP 10 BANK STREET SUITE 460 WHITE PLAINS, NY 10606			EXAMINER FELTEN, DANIEL S	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/767,126
Filing Date: January 22, 2001
Appellant(s): DAMAN ET AL.

Steven M. Hoffberg
(Reg. No. 33, 511)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/07/2008 appealing from the Office action mailed
10/20/2006

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6449601	FRIEDLAND et al	9-2002
6230146	ALAIA et al	5-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections – 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained through the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner by the manner in which the invention was made.

2. Claims 1-37 are rejected under 35 USC 103(a) as unpatentable over Friedland et al (US 6,339,601) in view of Alaia et al (US 6,230,146).

Friedland discloses (a) identifying at least one lot to be auctioned (see Friedland, col. 3, ll. 16+), having a plurality of units and associated auction parameters see Friedland, col. 3, ll. 16+);

(b) transmitting a remaining quantity of units within the lot over a network from a central server to plurality of remote locations (see Friedland, col. 2, ll. 24-42),

(c) receiving bid identification for remaining units with the lot at contemporaneous offering price from the plurality of remote locations over the network (see Friedland, col. 2, ll. 58-60); and

(d) decrementing the offering price over time (see Friedland, col. 2, ll. 29-36);
wherein remaining quantity information and bid identification information are communicated between the *central server* and a plurality of *local servers*, each local server communicating with at least one respective remote location, each server altering a format of information communicated between a remote location and a central server (see Friedland, col. 3, ll. 23-43);

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-wherein the auction extends over a predetermined duration (see Friedland, col. 6, ll. 14+)

-wherein the local server and the central server communicate information in packets through a packet switched network (see Internet, Friedland, Abstract)

Friedland fails to disclose wherein the information communicated between the central server and remote server is compressed. Data compression is a means for reducing the amount of space or bandwidth needed to store or transmit a block of data used in data communications. An artisan of ordinary skill in the art at the time of Friedland would have known and understood the benefits of data compression to reduce the amount of need bandwidth between the central server and the remote server and to increase data communication speed. Thus an artisan at the time of the invention would have sought to use the notoriously old and well known compressed data to reduce bandwidth and to consequently provide faster (real-time) communication between the central server and the remote server. Thus such a modification would be considered an obvious expedient well within the ordinary skill in the art.

Friedland fails to disclose that information is contained in a data packet. In packet-switching networks, a data packet, is a transmission unit of data of a fixed maximum size that consists of binary digits representing both data and a header containing an identification number source, destination addresses and error-control data. Data packets are used primarily in a data-packet network (such as the Internet). Since Friedland's invention transmits information/data over the Internet (see Friedland, Abstract, col. 2, ll. 12+), It would have been obvious for an artisan of ordinary skill in the art to recognize the fact that the information that is being transmitted is in the form of data packets. Thus an artisan at the time of the invention of Friedland would have sought to use data packets to transmit the large amounts of

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information from and/to the central server. Thus to use the data packet in Friedland invention would be an obvious expedient to one of ordinary skill in the art.

Friedland fails to disclose wherein said *local server* comprises a ruled database, and requires that bid identifications transmitted to said central server conform to rules in said rule database. Alaia discloses decision rules (see Alaia, col. 7, ll. 53+). It would have been obvious for an artisan at the time of the invention to employ the aforementioned feature of Alaia within Friedland because an artisan would have been motivated to provide order and conformity to the auction so as to provide a sense of fairness for all bids that are submitted either locally or remotely. Thus such a modification would be within the ordinary skill in the art.

Regarding claims 6, 7, 8 and 14 that were previously amended, are discussed below based the previously cited prior art.

--In response to applicant's argument that claim 6, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

--In response to the remote server communicates with a user by means of hypertext language protocol, as claim 7, (see Friedland, fig. 5, column 10, lines 13+).

--In response to *automatically maintaining synchronization of a clock at each remote location*, as claim 8, (see Friedland, see “*updates to bidders*, column 8, lines 10-50); and “decrementing offering price over time...” (see Freidland, column 2, lines 29-36). In the examiner's interpretation,

--In response to “generally relaxing a limiting restriction...*if* received within a bid time window...”, as in claim 14, is not considered a definite recitation because the word “if” precludes the certainty of the limitation being executed and/or provides a condition wherein the limitation is not performed. Therefore the limitation is rejected as non patentable (also consider Friedland, column 2, lines 29+).

(10) Response to Argument

3. In this case, the primary reference-Friedland, discloses a live auction that takes place over the Internet to remote bidders in real time and allows submission of bids from remote bidders during the live auction (see Friedland, Abstract, the secondary reference shows conducting electronic auctions wherein a dynamic lot closing extension feature (see Alaia, Abstract). the applicant has on numerous occasions asserted that the Internet and its underlying protocols do not guaranty delivery of any packets and that it can not guaranty that this occurs in real time. The Examiner continues to disagree. As stated in the previous office actions, the Internet is an example of packet-switching network. It is true that Freidland comments on the complexities implementing an Internet-based auction (see Friedland, col. 7, line 21+), but this does not take away from the fact that the Friedland may use data packets, when considering that bids (or electronic information) are filtered by the DLA system and submitted electronically over the Internet from a bidder’s computer system to the proxy’s computer system (see Friedland, column 8, lines 28+).

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Thus it would have been obvious to those of ordinary skill in the art to recognize the advantages of in art to apply the notoriously old and well known data-packet network technology to Friedland to yield the predictable results sought after by the applicants.

In regards to decrementing the offer price over time, it is being submitted that Dutch auctions are old and well known in the art, as Friedland discloses. The examiner disagrees that Friedland teaches away from Dutch auctions, but provides Internet based solution such that different types of auction styles can be implemented in real-time.

In regards to the use of various servers, Friedland contemplates that the DLA auction server (312) may be implemented more than one server PCs (see Friedland column 8, lines 10-12).

In response to employing a web browser, Friedland discloses that the DLA transaction model employees a web page that interacts with the central server (see Freidland, fig. 5, column 10, lines 13+).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Daniel S Felten/

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